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CHRISTOPHER HAYS, State Bar No. 59480 Law Offices of Christopher Hays One Embarcadero Center, Suite 500 San Francisco, California 94111 Telephone: (415) 398-0848 Facsimile: (415) 931-0444 Email: <hays-sf@pacbell.net> Attornevs for Defendants KEVIN VU and CAFE BONITA, INC. UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SINHDARELLA, INC. No. C 07 04353 WHA SUPPLEMENTAL DECLARATION VS. OF CHRISTOPHER HAYS IN OPPOSITION TO MOTION KEVIN VU, etc., et al., FOR PRELIMINARY INJUNCTION Defendants. 7 February 2008 Hearing Date: Time: 8:00 a.m. Courtroom: I, Christopher Hays, hereby declare under penalty of perjury that: 1. I am an attorney at law authorized to practice in the courts of the 19 State of California and in the United States District Court, Northern District of 20 California, and am the attorney for Defendants KEVIN VU and CAFE BONITA, INC., 21 herein. If called upon I would and could competently testify to the matters set forth 22 in this declaration based upon my personal knowledge. 23 2. This declaration is offered in response to the Court's request for 24 additional information regarding the "Boiling Crab" restaurant, which Kevin Vu 25 states in his Declaration in opposition to this motion that he had seen in Ho Chi Minh

traveling there beginning in December 2005.

City (formerly "Saigon") (the "Vietnam "Boiling Crab" Restaurant") when he was

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- 3. Attached hereto as Exhibit D [Exhibits A through C in opposition to this motion are attached to the Declaration of Kevin Vu] is a true and correct copy of the documents, Bates Numbered D000068 through D00076, inclusive, which were provided to Plaintiff herein in response to Plaintiff's Second Request for Production for "All DOCUMENTS CONCERNING any restaurants in Vietnam using the name THE BOILING CRAB or any similar name," all of which relate to the Vietnam "Boiling Crab" Restaurant.
  - 4. Kevin Vu informs me that page D000068 of Exhibit D is a true and correct copy of a printout he made of a webpage which no longer exists on the nhahangcua.com website depicting soup and salad dishes offered at the Vietnam "Boiling Crab" Restaurant.
  - 5. Kevin Vu informs me that pages D000070 through D000076 of Exhibit D is a true and correct copy of a printout from the kitw.com website discussing and depicting a trip to Vietnam by two American couples, which states on page D000072, under the heading "Saigon Traffic," that "We had dinner one night at the Boiling Crab."
- 6. Attached hereto as Exhibit E s a true and correct copy of a printout of the two photographs of the Vietnam "Boiling Crab" Restaurant which presently appear on the same kitwu.com website as small "thumbnail" photographs, depicted on pages D000075 and D000076 of Exhibit D.
- 7. Attached hereto as Exhibit F is a true and correct copy of a printout of the same website's Home Page at http://www.kitwu.com/index.php?inc=2-&page=3 that is discussed and depicted in Exhibits D and E. Said website states therein that it was "Created on 02/04/2003."
- 8. Attached hereto as Exhibit G is a true and correct copy of a printout of the "Hoi An" webpages from the same kitwu.com website, which states on the second page thereof, in the first line under the heading "Last Day in Hoi An," that "Sunday 4 March was our last day in Hoi An."

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- 9. My computer's calendar indicates that 4 March first appeared on a Sunday before 2003 in the year 2001, and did not appear on a Sunday again until the year 2007.
  - 10. Kevin Vu, who is presently in Vietnam and is accordingly unable to give his own declaration, has informed me that the Vietnam "Boiling Crab" Restaurant was no longer there when he traveled to Vietnam in July 2007.
  - 9. Kevin Vu informs me that he has an original "To Go" Menu from the Vietnam "Boiling Crab" Restaurant at his home in San Jose, California, but it cannot be produced to the Court at this time because no one presently in the United States has a key to his home.
  - 10. Should the Court wish to see said Original Vietnam "Boiling Crab" Restaurant Menu, and to have before it Kevin Vu's Declaration regarding the matters stated herein, it can continue the hearing on this matter for one week, since Mr. Vu has informed me that he is planning to return to the United States on Monday 11 February 2008, and his deposition is scheduled to be taken in this action on 12 and 13 February 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration is executed at San Francisco, California on the date set forth below.

20 Dated: 6 February 2008.

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22 Christopher Hays 23

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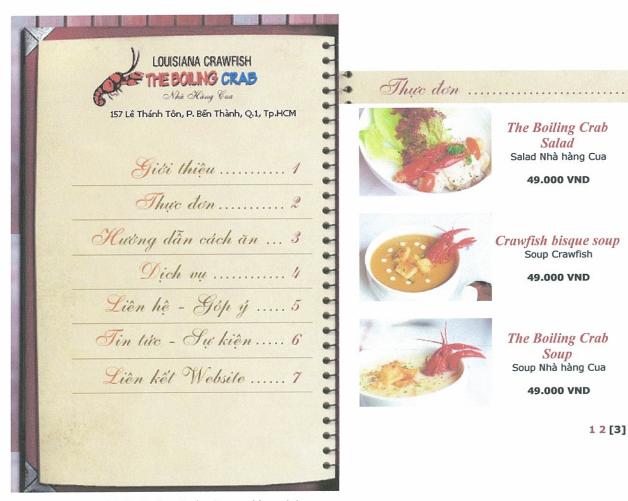
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**Exhibit D** 



Copyright © 2006 The Boiling Crab - Powered by e-Asiacorp

The Boiling a Sea 13:07 havh 04 25 GaWHA

(08) 823 3289 Thire don.....

Crawfish

Small (Nhỏ)

117.000 VND Large (Lớn) 197.000 VND

Crab

Small (Nhỏ) 147.000 VND Large (Lớn) 247.000 VND

Tiger Shrimp

Small (Nhỏ) 137.000 VND Large (Lớn) 237.000 VND

Crawfish Fried Rice

Cơm chiên Crawfish 79.000 VND

Crawfish Pasta

Mì Ý Crawfish 79.000 VND

Crawfish Cocktail Salad

Salad trái cây 49.000 VND

The Boiling Crab Salad

Salad Nhà Hàng Cua 49.000 VND

Crawfish Bisque Soup

Soup Crafish 49.000 VND

The Boiling Crab Soup

Soup Nhà Hàng Cua 49.000 VND

Bắp

Sausage

Xúo xích 7.000 VND

Nước ướng..... 3ODA (Coke, 7 up, Diet Coke, Twister, Xá xi...)

15.000 VND

7.000 VND

lước Suối lước Dừa

15.000 VND

lia ( Heineken, Tiger, Sài gòn)

15.000 VND 22.000 VND

Mở cửa các ngày trong tuần - Từ 10:30 - 23:30

Email: contact@nhahangcua.com

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CALENDAR

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SAIGON - HO CHI MINH CITY (HCMC)

## Saigon - Ho Chi Minh City (HCMC)

Our flight from Canberra to Sydney was good (Qantas). The Departure counter staff checked our baggage all the way through to HCMC which meant that we could go straight from the Domestic terminal in Sydney to the International terminal without having to wait for our baggage. The plane to Sydney was only about 1/3 full.

Our flight to HCMC was very good (Vietnam Airlines) although we departed about 40 minutes late. Gaye had nausea during the flight but apart from that everything was good. Pete and Chris said the space on the plane was much more roomy than Jetstar. The meals were Asian but they were also tasty.

We arrived at HCMC around 4pm and it was about 1720 before we got through immigration - lots of passengers from various planes. No problems with the immigration. Then we went off to collect our baggage. Everyone's baggage was there except mine. Probably all the batteries, battery chargers and cables in the bag caused a problem. Anyway the customs official was very helpful and explained that my baggage would arrive via Jetstar at 8pm - the following night.

The Liberty 6 Hotel staff were waiting for us outside the airport with the Liberty Hotels' minibus. The ride from the airport introduced us to the local traffic - very interesting to watch. The Liberty 6 Hotel is quite OK and in a great spot. The Ben Thanh market is just around the corner. Tip - always arrange for your hotel to pick you up from the airport as it saves hassles with taxis.

First night out. We had dinner in the hotel and then went for a stroll around the block. There are night markets in the street next to us. We browsed a bit and I bought a shirt and trousers to wear the next day as I didn't have my luggage. Tip - if you're travelling with your partner then put a pair of underclothes and socks and maybe a shirt in your partners luggage - just in case.

After Gaye, Pete and Chris turned in for the night I went for a longer stroll to buy water and milk and to get my bearings. The hotel staff said the supermarket was about four blocks down and on the right. Four blocks down and no supermarket. I asked around there and they said about four blocks down. Four blocks down and no supermarket. In that four by four block sweep I saw the Rex and Continental hotels. but no supermarket. Every 50 metres and every street corner I was offered a lift by motor cycle riders, two girls followed me down one sidewalk on their motorbike offering me a massage and something else. The later it got the more it happened. I

RELATED

These might interest you as well **Documents** Saigon

Saigon To Do List

## Wiki

Saigon

SaiGon

Photo Albums Saigon

Saigon

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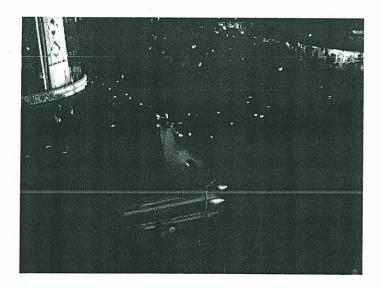
was looking for a supermarket that was facing the street, we found out later that they are tucked away inside multipurpose buildings and not on the ground floor.

On Saturday we went for a stroll to visit the Notre Dame Cathedral, Post Office, Rex Hotel, Continental Hotel, Opera House and the Tax Department store. It was very hot and humid but I think we did all right walking the distance. After a break we did the Ben Than Market which is just around the corner from the Liberty 6 Hotel.

On Sunday we visited the Chinese Quarter and the Bin Thay Market in Cho Lon. I have never seen so much packed into the one place and there were people everywhere and goods coming and going all the time. We got some good video footage of the area outside the market - bicycles laden with goods etc. Sunday night we had dinner at the Boiling Crab which is on the corner block down from the Liberty 6 Hotel. We were entertained by the traffic as we were seated on the balcony overlooking the intersection.

On Monday we caught up with Linda, Gaye's friend from school and went for a stroll to the old Russian Market area. We checked out several handicraft shops. That night we had dinner at Miss Saigon.

Tuesday we left in the morning for Hoi An. There is no airport at Hoi An so we flew into Danang. At Danang the hotel minibus and driver were waiting for us. More on the Hoi An page.



## Saigon Traffic

The traffic in Saigon was unbelievable. There are basic rules such as you drive on the right hand side of the road most of the time, and you give way to bigger vehicles especially if they are travelling fast, and you beep the horn as often as you can. All the other rules are optional, like stopping at red traffic lights and pedestrian signs and zebra crossings mean nothing. Crossing a busy street for the first time can be very

intimidating but after a while you get used to it.

We had dinner one night at the Boilng Crab which was on the corner of the block that the Liberty 6 was on. We sat at a balcony table and were quite amused at the night traffic crossing the intersection of two small streets.

Page 9 of 23

Another night we went to a restaurant (not that good) on the top of the Tax Department store overlooking the Rex Hotel and a roundabout at a major intersection. There was more traffic but we were further from the action and the effect was not the same.



## **HCMC Markets**

Markets are big part of Vietnam. I saw a market in every town we drove through either on the main road or just back from it. I saw one makeshift one on the rubble created for what might be a new housing development. In Australia we have huge farms, processing plants, warehouses, refrigeration units, trucks and supermarkets and volumes of regulations and middle men and inspectors controlling it all. If Vietnam goes the same way it will lose part of its character.

The big markets in HCMC are the Ben Thanh Market and the Cholon Market. The Ben Thanh Market is close to the backpackers area in Saigon and the Cholon Market is in the old Chinese district of Cholon. It is much easier to walk around the Ben Thanh Market than the Cholon Market as the Cholon market is crammed full of all sorts of goods and people and the goods just keep coming and going as a lot more dealing in bulk is done there. A new flash housing development at the back of the Cholon Market is a sign of successful businesses.

The Tax Department store has taken over from the Russian Market and is located near the Rex Hotel. It is airconditioned, has escalators and has a supermarket on the second floor. You can get fake brand goods there and cheap DVDs as well as reasonably priced lacquer ware and silk art.

If you want to purchase fake brand clothing and souvenirs and you are good at bargaining then the Ben Thanh Market is best. If you like a bit more comfort then the Tax Department store would be more suitable.

ument 52 Filed 02/06/2008

008 Page 10 of 23

There are smaller niche markets around the place and one we visited had military clothing and equipment, switch blades and fake zippo lighters.

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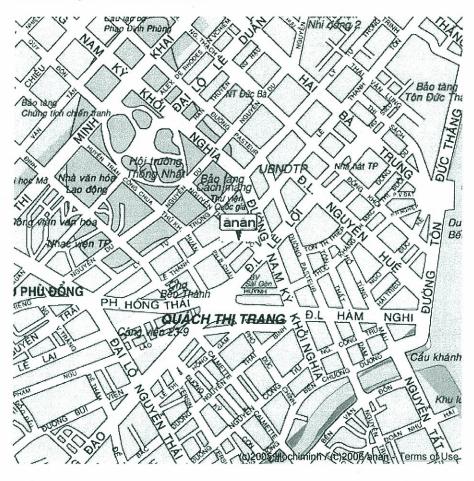
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Địa điểm dành cho người sành ăn ở Việt Nam "ănăn" > Hochiminh City > Nhà hàng Cua

The Boiling Crab

Thưởng thức món của đặc biệt của vùng Louisiana, đông nam nước Mỹ. "Thịt Crawfish ăn giống thịt tôm hùm nhưng mềm hơn và có vị đặc trưng"



Địa chỉ

157 Le Thanh Ton St., Dist. 1, HCMC

Điện thoại

08-823-3289

Giờ mở cửa

11:00 - 24:00

Ngày nghi

Liên hệ với Nhà hàng Cua

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Watching the traffic at the Boing Crab



The Continental Hotel



The Continental Hotel that's us!

CALENDAR

< December, 2007 >

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The Saigon Opera House



The Saigon Opera House - side view



The Rex Hotel



The roundabout at The Rex



The Rex Hotel at Night



Going to the Tax Department Store

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The Miss Saigon Restaurant



A nice building, there's a 'No Photos' sign next to it.



This tree id different to the norm in Canberra

CALENDAR

< December, 2007 >

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Night traffic near The Rex



Phone booths in the Saigon Post Office



The Post Office is worth a visit

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A map of Saigon in the Post Office



Post Office



The Boiling Crab

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Exhibit E

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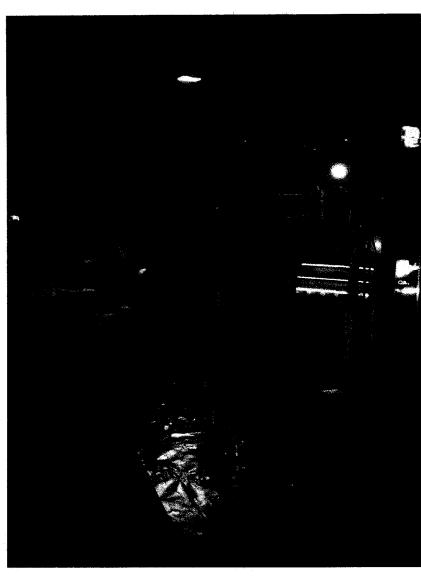
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The Boiling Crab

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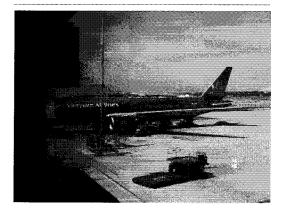
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(Submit Event

VIETNAM PLACES VISITED

Saigon Hoi An Halong Bay <u>Hanoi</u>

RAC DOES NAM



## KITWU Purpose

## Introduction

This site holds photos and information about the trip to Vietnam by Chris, Gaye, Pete and Phil.

See the menu above for links to individual web pages written about the places we visited. Open the photo albums below to see some of the photos we took in each place.

## **Photo Albums**

Check out our photos from our trip (all ours except for the photo of the Ben Thanh Market). They are in no particular

The photos have been reduced in resolution for guicker

Mixed Photo Album

Saigon Photo Album

Hoi An Photo Album

Halong Bay Photo Album

Hanoi Photo Album

Cuc Phuong National Park Photo Album

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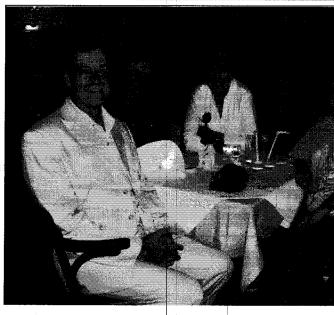
These might interest you as well

**Documents** 

Travel Docs

Travel Documents

FEATURED PHOTO



Dinner on the Emeraude

We cruised Halong Bay on the Emeraude, a refurbished paddle steamer. We si the boat. Phil is wearing his new suit from Hoi An and matching moustache.

**Exhibit G** 

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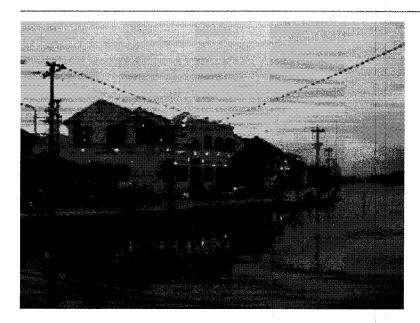
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CALENDAR

24 25 26 27 28 29 01

HOLAN



## Hoi An

Hoi An is a lovely place and is worth a couple of days visit if you have time. We stayed at the Vinh Hung Resort. We had villa style one room units overlooking one of the rivers and out the back is our own pool.

Hoi An is a must visit if you come to Vietnam. I will post some pictures we have taken later as for now the computer won't let me.

The town is as pretty as the picture you see here. There are lots of tourists but there are even more tailors, cafes and hawkers. The town is almost one big shopping centre.

Gaye and I got up at 4:45am to visit the market. Heaps of people buying and selling heaps of fish. All kinds of fish from sharks to sardines.

The weather was very humid but not as hot as Saigon.

There are over 400 tailor shops in Hoi An and we went to three of them. We had a few suits, skirts, pants and whatever made and are a little bit tired from walking from place to place. I got my cheapest suit made in one of the open shops in the Cloth Market. There are no change rooms here -you strip off in front of whoever is there and whoever walks down the aisle. The suits are not easy to try on when you are hot and sweaty.

Hoi An - KITWU

Case 3:07-cv-04353-WHA

Document 52

Filed 02/06/2008

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Submit Event

Friday night we hung around the old town and watched the full moon festivities. The locals light small red candles and float them down the river in multicoloured cardboard boxes. All the street lights are turned off and outside lighting is provided by silk lanterns. People got into small boats and paddled among the candles up and down the river. The close the streets to motorized traffic during the festivities and so it was nice to be able to walk down the street without the constant beep beep of motor bikes.

## Last Day in Hoi Ahn

Sunday 4 March was our last day in Hoi Ahn. We went for a tour to visit the Marble Mountains just before Danang and the Citadel in Hue. We started at 0700 and finished at 1730, it was a long hot trip. Climbing the many steps at Marble Mountain made me sweat so much my jeans and shirt were wet. Was it worth it - I think so as I got to see some things that I would never have seen otherwise. I would love to have some of the marble statues in our garden however the shipping charges are huge.

We stopped on top of the mountain pass between Danang and Hue and got hassled by touts selling postcards beads and fake pearls. We also saw the concrete fortifications built by the French and Americans.

The Citadel in Hue was huge. We had a very ordinary lunch at a restaurant in Hue that our driver took us to - worst lunch in Vietnam. The trip over the mountains between Danang and Hue was very scary. All in all we were very glad to arrive back at the hotel in one piece. Along the way there were a couple of road accidents - one involved a big truck that flipped over on its side.

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## PROOF OF SERVICE

## STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed by Law Offices Of Christopher Hays in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Embarcadero Center, Suite 500, San Francisco, California 94111.

On 16 February 2008 I served the foregoing document(s) described as SUPPLEMENTAL DECLARATION OF CHRISTOPHER HAYS IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION on the interested parties in this action as stated on the attached service list as follows:

X	By placing true copies thereof enclosed in sealed envelope(s) addressed as stated on the attached service list			
		BY PERSONAL SERVICE		
		I delivered such envelope(s) by hand to the offices of the		
	V	addressee(s).		
	X	BY MAIL		
		I am readily familiar with the firm's practice of collection and processing		
		correspondence for mailing. Under that practice such envelope(s)		
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		postage thereon fully prepaid at San Francisco, California, in the		
		ordinary course of business. I am aware that on motion of the party		
		served, service is presumed invalid if postal cancellation date or		
		postage meter date is more than one day after date of deposit for		
	П	mailing in affidavit.		
	ш	BY OVERNIGHT MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing via		
		Under that practice such envelope(s) would be deposited at an		
		authorized location on that same day with delivery fees		
		fully provided for at San Francisco, California, in the ordinary course of		
		business.		
X	BY E	E-MAIL:		
	On 6 February 2008, at approximately 1:45 pm, I served the above stated			
	docu	ment(s) by e-mail directed to the parties as indicated of the attached		
	servi	ce list.		

Executed on 6 February 2008 at San Francisco, California.

X (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Christopher Hays

## ATTACHED SERVICE LIST

Michael W. De Vries, Esq. Andrew J. Fossum, Esq. Latham & Watkins 650 Town Center Drive, 20th Floor Costa Mesa, California 92626

<mike.devries@lw.com> <Andrew.Fossum@lw.com>